

By: Paxton

S.B. No. 704

A BILL TO BE ENTITLED

AN ACT

relating to the capture and use of an individual's biometric identifiers, specimen, or genetic information by a governmental body or peace officer or by a person for commercial purposes; authorizing civil penalties.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. The heading to Title 11, Business & Commerce Code, is amended to read as follows:

TITLE 11. PERSONAL [~~IDENTITY~~] INFORMATION

SECTION 2. The heading to Subtitle A, Title 11, Business & Commerce Code, is amended to read as follows:

SUBTITLE A. IDENTIFYING AND OTHER PERSONAL INFORMATION

SECTION 3. The heading to Chapter 503, Business & Commerce Code, is amended to read as follows:

CHAPTER 503. BIOMETRIC IDENTIFIERS, GENETIC INFORMATION, AND
SPECIMEN COLLECTION

SECTION 4. Chapter 503, Business & Commerce Code, is amended by adding Section 503.0005 to read as follows:

Sec. 503.0005. DEFINITIONS. In this chapter:

(1) "Deidentified data" means data not reasonably linked to an identifiable individual.

(2) "Direct-to-individual genetic testing company" means an entity that:

(A) offers genetic testing products or services

1 directly to individuals; or

2 (B) collects, uses, or analyzes genetic data that
3 an individual provides to the entity.

4 (3) "DNA" means deoxyribonucleic acid.

5 (4) "Express consent" means an individual's
6 affirmative response to a clear and meaningful notice regarding the
7 collection, use, or disclosure of genetic data for a specific
8 purpose.

9 (5) "Genetic data" means any data, regardless of
10 format, concerning an individual's genetic characteristics. The
11 term:

12 (A) includes:

13 (i) raw sequence data derived from
14 sequencing all or a portion of an individual's extracted DNA;

15 (ii) genotypic and phenotypic information
16 obtained from analyzing an individual's raw sequence data; and

17 (iii) health information regarding the
18 health conditions that an individual self-reports to a company and
19 that the company:

20 (a) uses for scientific research or
21 product development; and

22 (b) analyzes in connection with the
23 individual's raw sequence data; and

24 (B) does not include deidentified data.

25 (6) "Genetic testing" means:

26 (A) a laboratory test of an individual's complete
27 DNA, regions of DNA, chromosomes, genes, or gene products to

1 determine the presence of the individual's genetic
2 characteristics; or

3 (B) an interpretation of an individual's genetic
4 data.

5 (7) "Specimen" means a sample of an individual's
6 blood, urine, or other bodily fluid or tissue taken for scientific
7 analysis to detect or diagnose a disease.

8 SECTION 5. The heading to Section 503.001, Business &
9 Commerce Code, is amended to read as follows:

10 Sec. 503.001. CAPTURE OR USE OF BIOMETRIC IDENTIFIER;
11 COLLECTION OR USE OF SPECIMEN.

12 SECTION 6. Section 503.001, Business & Commerce Code, is
13 amended by amending Subsections (b) and (c) and adding Subsection
14 (c-3) to read as follows:

15 (b) A person may not capture a biometric identifier of or
16 collect a specimen from an individual for a commercial purpose
17 unless the person:

18 (1) informs the individual before capturing the
19 biometric identifier or collecting the specimen of the pending
20 capture or collection; [and]

21 (2) receives the individual's consent to capture the
22 biometric identifier or collect the specimen; and

23 (3) if capturing a biometric identifier, informs the
24 individual before capturing the biometric identifier of the
25 purposes for which the person will use the biometric identifier.

26 (c) A person who possesses a biometric identifier or
27 specimen of an individual that is captured or collected for a

1 commercial purpose:

2 (1) may not sell, lease, or otherwise disclose the
3 biometric identifier or specimen test results to another person
4 unless:

5 (A) the individual consents to the disclosure for
6 identification purposes in the event of the individual's
7 disappearance or death;

8 (B) the disclosure of a biometric identifier
9 completes a financial transaction that the individual requested or
10 authorized;

11 (C) the disclosure is required or permitted by a
12 federal statute or by a state statute other than Chapter 552,
13 Government Code; or

14 (D) the disclosure is made by or to a law
15 enforcement agency for a law enforcement purpose in response to a
16 warrant;

17 (2) shall store, transmit, and protect from disclosure
18 the biometric identifier or specimen test results using reasonable
19 care and in a manner that is the same as or more protective than the
20 manner in which the person stores, transmits, and protects any
21 other confidential information the person possesses; and

22 (3) shall destroy the biometric identifier or specimen
23 within a reasonable time, but not later than the first anniversary
24 of the date the purpose for capturing ~~collecting~~ the identifier
25 or collecting the specimen expires, except as provided by
26 Subsection (c-1).

27 (c-3) A person who captures a biometric identifier of or

collects a specimen from an individual for a commercial purpose shall provide to the individual information on:

(1) the type of technology to be used on the identifier or the scientific testing to be used on the specimen;

(2) the purpose of and method for capturing the identifier or collecting the specimen; and

(3) the method for storing data related to the captured identifier or collected specimen.

SECTION 7. Chapter 503, Business & Commerce Code, is amended by adding Sections 503.002, 503.003, 503.004, and 503.005 to read as follows:

Sec. 503.002. REQUIREMENTS FOR CERTAIN USES OF DEIDENTIFIED DATA. (a) Except as otherwise provided by this chapter or other law, a direct-to-individual genetic testing company that possesses an individual's deidentified data shall:

(1) implement administrative and technical measures to ensure the data is not associated with a specific individual; and

(2) publicly commit to maintaining and using data in deidentified form and refraining from making any attempt to identify an individual using the individual's deidentified data.

(b) If a direct-to-individual genetic testing company shares an individual's deidentified data with another person, the company shall enter into a legally enforceable contractual obligation prohibiting the person from attempting to identify an individual using the individual's deidentified data.

Sec. 503.003. REQUIREMENTS FOR CERTAIN USES OF GENETIC DATA AND SPECIMEN. (a) A direct-to-individual genetic testing company

1 shall develop, implement, and maintain:

2 (1) a comprehensive security program to protect an
3 individual's genetic data against unauthorized access, use, or
4 disclosure; and

5 (2) a prominent, publicly available privacy notice
6 that includes information about the company's data collection,
7 consent, use, access, disclosure, transfer, security, retention,
8 and deletion practices.

9 (b) Before collecting, using, or disclosing an individual's
10 genetic data, a direct-to-individual genetic testing company shall
11 provide to the individual:

12 (1) information about the company's collection, use,
13 and disclosure of genetic data the company collects through a
14 genetic testing product or service, including information that:

15 (A) clearly describes the company's use of the
16 genetic data;

17 (B) specifies the persons who have access to test
18 results; and

19 (C) specifies the manner in which the company may
20 share the genetic data; and

21 (2) the privacy notice required by Subsection (a)(2).

22 (c) A direct-to-individual genetic testing company shall
23 provide a process for an individual to:

24 (1) access the individual's genetic data;

25 (2) delete the individual's account and genetic data;

26 and

27 (3) destroy or require the destruction of the

1 individual's specimen.

2 Sec. 503.004. REQUIRED CONSENT. A direct-to-individual
3 genetic testing company engaging in any of the following activities
4 must obtain:

5 (1) an individual's separate express consent for:

6 (A) the transfer or disclosure of the
7 individual's genetic data to any person other than the company's
8 vendors and service providers;

9 (B) the use of genetic data for a purpose other
10 than the primary purpose of the company's genetic testing product
11 or service; or

12 (C) the retention of any specimen provided by the
13 individual following the company's completion of the initial
14 testing service requested by the individual;

15 (2) an individual's informed consent in accordance
16 with guidelines for the protection of human subjects issued under
17 45 C.F.R. Part 46, for transfer or disclosure of the individual's
18 genetic data to a third party for:

19 (A) research purposes; or

20 (B) research conducted under the control of the
21 company for the purpose of publication or generalizable knowledge;
22 and

23 (3) an individual's express consent for:

24 (A) marketing by the company to the individual
25 based on the individual's genetic data; or

26 (B) marketing by a third party to the individual
27 based on the individual's ordering or purchasing of a genetic

1 testing product or service.

2 Sec. 503.005. PROHIBITED DISCLOSURES. (a) A
3 direct-to-individual genetic testing company may not disclose an
4 individual's genetic data to a law enforcement entity or other
5 governmental body unless:

6 (1) the company first obtains the individual's express
7 written consent; or

8 (2) the entity or body obtains a warrant under Article
9 18.25, Code of Criminal Procedure, or complies with another valid
10 legal process required by the company.

11 (b) A direct-to-individual genetic testing company may not
12 disclose, without first obtaining an individual's written consent,
13 the individual's genetic data to:

14 (1) an entity that offers health insurance, life
15 insurance, or long-term care insurance; or

16 (2) an employer of the individual.

17 SECTION 8. Section 503.001(d), Business & Commerce Code, is
18 redesignated as Section 503.006, Business & Commerce Code, and
19 amended to read as follows:

20 Sec. 503.006. CIVIL PENALTY. [~~(d)~~] A person who violates
21 this chapter [section] is subject to a civil penalty of not more
22 than \$25,000 for each violation. The attorney general may bring an
23 action to recover the civil penalty.

24 SECTION 9. Chapter 18, Code of Criminal Procedure, is
25 amended by adding Article 18.25 to read as follows:

26 Art. 18.25. WARRANTS FOR GENETIC INFORMATION FROM CERTAIN
27 BUSINESSES. (a) This article applies to a business that collects

1 and analyzes genetic information to provide information about an
2 individual's genetic traits or biological relationships.

3 (b) A peace officer may require a business described by
4 Subsection (a) to provide the genetic information of a customer of
5 the business by obtaining a warrant under this chapter or by
6 obtaining the consent of the customer.

7 (c) A court may issue a warrant for genetic information held
8 by a business described by Subsection (a) only if the applicant for
9 the warrant shows that reasonable investigative leads have been
10 pursued and have failed to identify the perpetrator of an alleged
11 criminal offense. For purposes of this subsection, reasonable
12 investigative leads are credible, case-specific facts,
13 information, or circumstances that would lead a reasonably cautious
14 investigator to believe that pursuit of the leads would have a fair
15 probability of identifying the perpetrator of the offense.

16 (d) A peace officer who obtains a warrant with respect to
17 genetic information held by a business described by Subsection (a)
18 may apply to the court issuing the warrant for an order commanding
19 the business to whom the warrant is directed not to disclose to any
20 person the existence of the warrant. The order is effective for the
21 period the court considers appropriate. The court shall enter the
22 order under this subsection if the court determines that there is
23 reason to believe that notification of the existence of the warrant
24 will lead to an adverse result, including:

25 (1) endangering the life or physical safety of an
26 individual;

27 (2) flight from prosecution;

1 (3) destruction of or tampering with evidence;
2 (4) intimidation of a potential witness; or
3 (5) otherwise seriously jeopardizing an investigation
4 or unduly delaying a trial.

5 (e) Unless an order is issued under Subsection (d), the
6 peace officer who executes a warrant for the genetic information of
7 a customer shall notify the customer of the existence of the
8 warrant.

9 SECTION 10. The heading to Chapter 560, Government Code, is
10 amended to read as follows:

11 CHAPTER 560. BIOMETRIC IDENTIFIER AND GENETIC INFORMATION

12 SECTION 11. Section 560.001, Government Code, is amended to
13 read as follows:

14 Sec. 560.001. DEFINITIONS. In this chapter:

15 (1) "Biometric identifier" means any measurement of
16 the human body or its movement that is used to attempt to uniquely
17 identify or authenticate the identity of an individual, including a
18 blood sample, hair sample, skin sample, body scan, retina or iris
19 scan, fingerprint, voiceprint, or record of hand or face geometry.

20 (2) "Genetic information" means information that is:
21 (A) obtained from or based on a scientific or
22 medical determination of the presence or absence in an individual
23 of a genetic characteristic; or

24 (B) derived from the results of a genetic test of
25 an individual's genes, gene products, or chromosomes.

26 (3) "Genetic test" has the meaning assigned by Section
27 546.001, Insurance Code.

1 (4) "Governmental body" has the meaning assigned by
2 Section 552.003, except that the term includes each entity within
3 or created by the judicial branch of state government.

4 SECTION 12. Chapter 560, Government Code, is amended by
5 adding Section 560.0015 to read as follows:

6 Sec. 560.0015. STATUTORY AUTHORITY REQUIRED. (a) A
7 governmental body may not capture or possess a biometric identifier
8 of an individual or require a biometric identifier as a
9 prerequisite for providing a governmental service to the individual
10 unless the governmental body:

11 (1) has specific, explicit statutory authority that:

12 (A) allows the governmental body to:

13 (i) capture or possess the individual's
14 biometric identifier; or

15 (ii) require the individual's biometric
16 identifier as a prerequisite for providing a governmental service
17 to the individual; or

18 (B) allows the governmental body to require and
19 obtain the written consent of the individual or the individual's
20 legal guardian before:

21 (i) capturing or possessing the
22 individual's biometric identifier; or

23 (ii) requiring the individual's biometric
24 identifier as a prerequisite for providing a governmental service
25 to the individual;

26 (2) obtains the voluntary, written consent of the
27 individual or the individual's legal guardian;

1 (3) is a health care provider or health care facility
2 that captures, possesses, or requires the individual's biometric
3 identifier in the provision of health care services to the
4 individual; or

5 (4) is a criminal justice agency, as defined by
6 Article 66.001, Code of Criminal Procedure, that captures,
7 possesses, or requires the individual's biometric identifier while
8 engaged in the administration of criminal justice, as defined by
9 that article.

10 (b) For purposes of Subsection (a), Subchapter B, Chapter
11 33, Health and Safety Code, is specific, explicit statutory
12 authority under Subsection (a)(1)(A)(i) to capture or possess an
13 individual's biometric identifier in the conduct of newborn
14 screening as provided by that subchapter.

15 SECTION 13. Chapter 560, Government Code, is amended by
16 adding Sections 560.004, 560.005, 560.006, and 560.007 to read as
17 follows:

18 Sec. 560.004. DESTRUCTION OF SAMPLE GENETIC MATERIAL;
19 EXCEPTIONS. A governmental body shall promptly destroy a sample of
20 genetic material obtained from an individual for a genetic test
21 after the purpose for which the sample was obtained is accomplished
22 unless:

23 (1) the sample is retained under a court order;

24 (2) the individual authorizes retention of the sample
25 for medical treatment or scientific research;

26 (3) the sample was obtained for research authorized by
27 an institutional review board and retention of the sample is:

1 (A) under a requirement the institutional review
2 board imposes on a specific research project; or

3 (B) authorized by the research participant with
4 institutional review board approval in accordance with federal law;
5 or

6 (4) the sample was obtained for a screening test
7 prescribed by the Department of State Health Services under Section
8 33.011, Health and Safety Code, and performed by that department or
9 a laboratory approved by that department.

10 Sec. 560.005. CONFIDENTIALITY OF GENETIC INFORMATION. (a)
11 Except as provided by Sections 560.006(a) and (b), genetic
12 information is confidential and privileged regardless of the source
13 of the information.

14 (b) A governmental body that holds an individual's genetic
15 information may not disclose or be compelled to disclose, by
16 subpoena or otherwise, that information unless the disclosure is
17 specifically authorized by the individual as provided by Section
18 560.007.

19 (c) This section applies to a redisclosure of genetic
20 information by a secondary recipient of the information after
21 disclosure of the information by an initial recipient. Except as
22 provided by Section 560.006(b), a governmental body may not
23 redisclose genetic information unless the redisclosure is
24 consistent with the disclosures authorized by the tested individual
25 under an authorization executed under Section 560.007.

26 Sec. 560.006. EXCEPTIONS TO CONFIDENTIALITY. (a) Subject
27 to Subchapter G, Chapter 411, genetic information may be disclosed

1 without an authorization under Section 560.007 if the disclosure
2 is:

3 (1) authorized under a state or federal criminal law
4 relating to:

5 (A) the identification of individuals; or

6 (B) a criminal or juvenile proceeding, an
7 inquest, or a child fatality review by a multidisciplinary
8 child-abuse team;

9 (2) required under a specific order of a state or
10 federal court;

11 (3) needed to establish paternity as authorized under
12 a state or federal law;

13 (4) needed to provide genetic information of a
14 decedent and the information is disclosed to the blood relatives of
15 the decedent for medical diagnosis; or

16 (5) needed to identify a decedent.

17 (b) A governmental body may redisclose genetic information
18 without an authorization under Section 560.007 for actuarial or
19 research studies if:

20 (1) a tested individual could not be identified in any
21 actuarial or research report; and

22 (2) any materials that identify a tested individual
23 are returned or destroyed as soon as reasonably practicable.

24 (c) A redisclosure authorized under Subsection (b) may
25 contain only genetic information reasonably necessary to
26 accomplish the purpose for which the information is disclosed.

27 Sec. 560.007. AUTHORIZED DISCLOSURE. An individual or an

individual's legal representative may authorize disclosure of the individual's genetic information by submitting a statement that:

(1) is written in plain language and is signed by the individual or legal representative;

(2) is dated;

(3) contains a specific description of the information to be disclosed;

(4) identifies or describes each person authorized to disclose the genetic information;

(5) identifies or describes the individuals or entities to whom the genetic information may be disclosed or subsequently redisclosed;

(6) describes the specific purpose of the disclosure; and

(7) advises the individual or legal representative that the individual's authorized representative is entitled to receive a copy of the authorization.

SECTION 14. Section 33.012(a), Health and Safety Code, is amended to read as follows:

(a) Screening tests may not be administered to a newborn child whose parents, managing conservator, or guardian objects to ~~[on the ground that] the tests [conflict with the religious tenets or practices of an organized church of which they are adherents].~~

SECTION 15. Subchapter C, Chapter 81, Health and Safety Code, is amended by adding Section 81.0465 to read as follows:

Sec. 81.0465. EXPRESS CONSENT FOR SPECIMEN COLLECTION, USE, AND DISCLOSURE; CONFIDENTIALITY; CIVIL PENALTY. (a) In this

1 section:

2 (1) "COVID-19" means the 2019 novel coronavirus
3 disease.

4 (2) "Express consent" means an individual's
5 affirmative response to a clear and meaningful notice regarding the
6 collection, use, or disclosure of a specimen for a specific
7 purpose.

8 (3) "Specimen" means a sample of an individual's
9 blood, urine, or other bodily fluid or tissue taken for scientific
10 analysis to detect or diagnose a disease.

11 (b) A person who collects a specimen from an individual to
12 test for a specific disease may not use or analyze the specimen for
13 a purpose unrelated to the test without the individual's express
14 consent to the use or analysis for another purpose.

15 (c) A person who possesses an individual's specimen that is
16 collected for a commercial purpose shall destroy the specimen
17 within a reasonable time, but not later than the first anniversary
18 of the date the purpose for collecting the specimen expires.

19 (d) A person who obtains an individual's specimen or other
20 personal information in relation to the collection of COVID-19 data
21 may not disclose that information without the express consent of
22 the individual.

23 (e) A person who violates this section is subject to a civil
24 penalty of not more than \$1,000 for each violation. The attorney
25 general may bring an action to recover the civil penalty.

26 (f) This section does not apply to a specimen collected by a
27 direct-to-individual genetic testing company as defined by Section

1 503.0005, Business & Commerce Code.

2 SECTION 16. Article 18.25, Code of Criminal Procedure, as
3 added by this Act, applies only to a warrant issued on or after the
4 effective date of this Act.

5 SECTION 17. The changes in law made by this Act apply only
6 to a biometric identifier captured, a specimen collected, or
7 genetic information obtained or to a biometric identifier, a
8 specimen, or genetic information requested on or after the
9 effective date of this Act. A biometric identifier, a specimen, or
10 genetic information captured, collected, obtained, or requested
11 before that date is governed by the law in effect immediately before
12 the effective date of this Act, and that law is continued in effect
13 for that purpose.

14 SECTION 18. This Act takes effect September 1, 2023.